

### **REMARKS**

This amendment is submitted with a request for a one month extension and appropriate fee in reply to the Office Action dated October 11, 2006. Claims 1-13 currently stand rejected. Applicant has amended independent claims 10-13 to more clearly recite the claimed invention. No new matter has been added by the amendment.

In light of the amendment and the remarks presented below, Applicant respectfully requests reconsideration and allowance of all now-pending claims of the present application.

#### **Claim Rejections - 35 USC §112 and 101**

Claims 10-13 currently stand rejected under 35 U.S.C. §112 as being indefinite and under 35 U.S.C. §101 as being non-statutory. Applicant has amended independent claim 10 to recite similar subject matter to that which was previously claimed in independent claim 10 except that amended independent claim 10 is more clearly expressed in a format Applicant believes to be statutory. Claims 11-13 have been amended to correspond to the format of amended independent claim 10.

Accordingly, Applicant respectfully submits that the rejections of claims 10-13 are overcome.

#### **Claim Rejections - 35 USC §103**

Claims 1-13 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wiser et al. (U.S. Patent No. 6,868,403, hereinafter "Wiser") in view of Orlik (U.S. Patent Application Publication No. 2004/009226).

Notably, Orlik was published on May 13, 2004, after the filing date of the present application (i.e., March 1, 2002), and is therefore allegedly prior art under 35 U.S.C. §102(e). Pursuant to 35 U.S.C. §103(c), for applications filed after November 29, 1999, such as the present application, references that qualify as prior art under 35 U.S.C. §102(e), (f) or (g) cannot properly be cited to support an obviousness rejection if the subject matter of the reference and the pending application were commonly owned at the time of the invention. In the instant case, the subject matter of Orlik was commonly owned at the time of the invention of the subject

matter of the present application. In this regard, the present application and Orlik are both effectively assigned to Nokia Corporation as evidenced by (a) the assignment of the present application to Nokia Corporation recorded on March 1, 2002 at Reel 012661, Frame 0433, and (b) the assignment of Orlik to Nokia Corporation recorded on June 4, 2003 at Reel 014349, Frame 0405. As such, Orlik cannot properly be cited in support of an obviousness rejection of the claimed invention under 35 U.S.C. § 103.

As Orlik is disqualified as prior art to support a rejection of the claimed invention under 35 U.S.C. § 103, Applicant respectfully submits that the rejections of Claims 1-13, under 35 U.S.C. § 103(a) as being unpatentable over Wisner in view Orlik are overcome. In view of the foregoing remarks, Applicant respectfully requests reconsideration and allowance of all of the pending claims of the present application.

**CONCLUSION**

In view of the amendments and the remarks submitted above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Chad L. Thorson  
Registration No. 55,675

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON FEBRUARY 12, 2007.